

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TECK METALS, LTD.,

Plaintiff,

vs.

CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON AND
CERTAIN LONDON MARKET
INSURANCE COMPANIES,

Defendants.

No. CV-05-411-LRS

**ORDER RE PLAINTIFF'S
MOTION TO COMPEL,
*INTER ALIA***

The parties, through a conference with the Honorable James P. Hutton, and subsequent conferences between counsel, have reached a “compromise in principle” with regard to certain interrogatories and/or requests for production (RFPs) which this court finds to be reasonable and will adopt as its rulings, with further modifications as indicated based on a comparison of Defendants’ “Stipulation To Resolve Certain Discovery Disputes” (Ex. E to Ct. Rec. 630) and Plaintiff’s proposed revisions thereto (Ex. F. To Ct. Rec. 630):

A) RFP No. 1 and Interrogatory No. 4 (Personal Jurisdiction): London Market Insurers will use a polling approach to identify lawsuits filed since 1995

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1 involving the London Market Insurers in Washington based on a diligent further
2 inquiry of Lane Powell and Resolute. London Market Insurers will identify such
3 lawsuits with sufficient specificity so that Teck can locate the case (e.g., parties'
4 names, docket number, etc.). London Market Insurers will describe the details of
5 its inquiry to Teck's counsel in writing, including identification of who made the
6 inquiries on behalf of London Market Insurers, what was requested, who was
7 spoken to at Lane Powell and Resolute, and what was learned. London Market
8 Insurers will make diligent efforts to identify from the litigation files the
9 syndicates and/or companies who subscribed to the policies at issue in the cases
10 identified.

11
12 **B) RFP No. 3 (FSIA):** London Market Insurers will poll appropriate
13 persons at Duane Morris LLP, Lane Powell P.C., Locke Lord Liddell & Bissell
14 LLP, Mendes & Mount, LLP, Baach Robinson LLP, and Phelps Dunbar LLP to
15 identify all cases where the Foreign Sovereign Immunities Act ("FSIA") was
16 raised in motion practice. London Market Insurers will describe the details of this
17 inquiry to Teck's counsel in writing, including identification of who made the
18 inquiries on behalf of London Market Insurers, what was requested, who was
19 spoken to at the six law firms, and what was learned. London Market Insurers will
20 identify any cases with sufficient specificity to enable Teck to locate the case (e.g.
21 parties' names, docket number, etc.).

22
23 **C) RFPs Nos. 5 and 6 (Personal Jurisdiction):** London Market Insurers
24 will identify, in addition to the 23 Washington lawsuits previously identified, the
25 prior seven earlier environmental coverage cases involving London Market
26 Insurers in Washington state or federal court before 1995 to the extent that seven

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1 exist, in order to obtain a list of 30. London Market Insurers will identify any
2 cases with sufficient specificity to enable Teck to locate the case (e.g. parties'
3 names, docket number, etc.).
4

5 **D) RFP No. 16 (Testimony of Lead Underwriters):** London Market
6 Insurers will identify all transcripts of Richard Youell and any other lead
7 underwriters who are later identified, and produce those transcripts no later than
8 December 15, 2010. In the event there is a protective order, London Market
9 Insurers will provide Teck a copy of the protective order and join Teck in a
10 request to lift that protective order as to the transcript(s) protected. As to any trial
11 testimony or deposition transcript filed in a court and available to the public,
12 notification of the policyholder will not be necessary. If the transcript is not
13 publicly available, however, London Market Insurers will provide notice to the
14 policyholder to which the testimony relates.
15

16 **E) RFP No. 43 (Testimony of Claims Handlers):** London Market Insurers
17 will identify all transcripts of the claims handlers that handled Teck's claims and
18 produce those transcripts. In the event there is a protective order, London Market
19 Insurers will provide Teck a copy of the protective order and join Teck in a
20 request to lift that protective order as to the transcript(s) protected. As to any trial
21 testimony or deposition transcript filed in a court and available to the public,
22 notification of the policyholder will not be necessary. If the transcript is not
23 publicly available, however, London Market Insurers will provide notice to the
24 policyholder to which the testimony relates.
25
26

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1 **F) RFP No. 92 (Testimony of Drafters of NMA 1685):** London Market
2 insurers will identify all known underwriters who were involved in the drafting of
3 NMA 1685. London Market Insurers will identify and produce transcripts of these
4 underwriters. In the event there is a protective order, London Market Insurers will
5 provide Teck a copy of the protective order and join Teck in a request to lift that
6 protective order as to the transcript(s) protected. As to any trial testimony or
7 deposition transcript filed in a court and available to the public, notification of the
8 policyholder will not be necessary. If the transcript is not publicly available,
9 however, London Market Insurers will provide notice to the policyholder to which
10 the testimony relates.

11
12 **G) RFP Nos. 23, 24 and 49 (ECG Documents):** London Market Insurers
13 will produce any non-privileged responsive documents related to the
14 Environmental Claims Group that were produced in *In re Texas Eastern*
15 *Transmission Corp. PCB Contamination Insurance Coverage Litigation*, MDL
16 Docket No. 764 (E.D. Pa. September 18, 1990), and *Public Serv. Elec. & Gas Co.*
17 *v. Associated Elec. & Gas Insurance Serv., Ltd.*, Civ. A. No. 88-4811 (D. N.J.
18 1990), and will produce a privilege log for those documents withheld as
19 privileged.

20
21 **H) RFP Nos. 33 and 42 (Documents and Briefing Related to NMA**
22 **1685):** London Market Insurers will produce any briefs, testimony, and orders
23 regarding NMA 1685 from the 12 earliest Washington cases in which NMA 1685
24 was discussed. In the event there is a protective order as to any of these materials,
25 London Market Insurers will join Teck in a request to lift that protective order.

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1 **I) RFP No. 40 (Defense When Case Over \$5 Million):** London Market
2 Insurers will poll appropriate persons at Duane Morris LLP, Lane Powell P.C.,
3 Locke Lord Liddell & Bissell LLP, Mendes & Mount, LLP, Baach Robinson LLP,
4 and Phelps Dunbar LLP to identify any environmental claims that have been
5 asserted since 1996 in which London Market Insurers' coverage attached at \$5
6 million or more, and in which London Market Insurers associated in the defense of
7 the underlying claim. London Market Insurers will describe the details of this
8 inquiry to Teck's counsel in writing, including identification of who made the
9 inquiries on behalf of London Market Insurers, what was requested, who was
10 spoken to at the six law firms, and what was learned. London Market Insurers will
11 produce non-privileged portions of any claims files that might be identified,
12 subject to any required notification and an opportunity to object by the
13 policyholder.

14
15 **J) RFP No. 41 (Teck's Claims File):** London Market Insurers will confirm
16 that all non-privileged documents comprising in any way Teck's own claims files,
17 including any files relating to claims besides those at issue in this case relating to
18 Lake Roosevelt, have been produced to Teck.

19
20 **K) RFP No. 44 (Reinsurance):** London Market Insurers will provide a log
21 of any notice letters to their reinsurers in lieu of the actual notice letters. The log
22 will contain the date of the letters, the subject matter (including whether the Lake
23 Roosevelt claim was mentioned), the identity of the author of the letter, and the
24 identity of the recipient at each reinsurance company or reinsurer. If Teck
25 believes that further information is necessary, both parties reserve any positions
26 they have on this point.

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1 **L) RFP No. 89 (Documents Which Communicate Application of Policy**
2 **Terms to Pollution Claims):** London Market Insurers will produce the
3 documents produced in the *Whittaker* case. In the event there is a protective order
4 in that case, London Market Insurers will provide Teck a copy of the protective
5 order and join Teck in a request to lift that protective order as to the transcript(s)
6 protected. As to any documents filed in court and available to the public, a lifting
7 of a protective order is not necessary. Teck reserves its right to seek additional
8 responsive documents and London Market Insurers reserve their right to oppose
9 the same.

10
11 **M) RFP No. 91 (Representations to Regulators):** London Market Insurers
12 will make reasonable inquiries to determine whether any documents are known to
13 exist that reflect representations made by London Market Insurers to insurance
14 regulators in Illinois and Kentucky regarding NMA 1685, and if so, and such
15 documents are in the possession of London Market Insurers, they will be
16 produced.

17
18 **N) RFP No. 102 (Part VII Transfer):** The court **STAYS** ruling on this
19 RFP until if and when a judgment is rendered in Teck's favor.

20
21 **O) Interrogatory No. 20 (NMA Committee):** London Market Insurers will
22 identify any Janson Green, Merrett and PCW underwriters who were known to be
23 member of the NMA between 1970 and 1985.

24
25 To the extent these rulings are consistent with the Report and
26 Recommendation (Ct. Rec. 524) and Supplemental Report and Recommendation

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(Ct. Rec. 552) filed by Magistrate Judge Hutton, the court **ADOPTS** said Report and Recommendation, and Supplemental Report and Recommendation. Plaintiff's Motion To Compel (Ct. Rec. 482) and Defendants' Motion For Protective Order (Ct. Rec. 508) are **GRANTED in part and DENIED in part** as reflected by these rulings.

ALL OF THE INFORMATION REQUIRED TO BE PRODUCED BY LONDON MARKET INSURERS WILL BE PRODUCED TO TECK NO LATER THAN DECEMBER 15, 2010 AT THE OFFICE OF TECK'S COUNSEL OR ANOTHER LOCATION AGREED UPON BY THE PARTIES.

A separate order will be issued regarding the "Other Claims Files" which are the subject of RFP Nos. 37, 38, and 39, and Interrogatories 12 and 13.

IT IS SO ORDERED. The District Executive is directed to enter this order and forward copies to counsel.

DATED this 19th of November, 2010.

s/Lonny R. Suko

LONNY R. SUKO
Chief United States District Judge

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